THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.30109 of 1995

ORAL ORDER:

This writ petition is filed seeking to quash the Award passed by the first respondent-Tribunal in I.D.No.415 of 1993 dated 18.9.1995.

It appears, second respondent who was an employee of petitioner-management, was dismissed from service on the ground of misappropriation of certain amounts. The sum and substance of the charge is that he has distributed the amounts to fictitious persons by creating false record. After conducting a detailed enquiry into the matter, petitioner was dismissed from service. Questioning the same, he raised a dispute under Section 2A(2) of the Industrial Disputes Act, 1947 which was registered as I.D.No.415 of 1993. It is the case of the second respondent-workman that the enquiry was not properly conducted and no opportunity was given to him to defend his case and dismissal from service is disproportionate to the charges levelled against him. The management filed a detailed counter denying the allegations and stated that the enquiry was conducted in a fair manner by giving full opportunity to the petitioner.

After considering the rival contentions, the Tribunal below found that 'the management proved that the petitioner and one Agarwal misappropriated the money of the respondent management by showing that the wages were paid to the workers who have not worked in the company'. However, the Tribunal below took a lenient view of the matter and opined that dismissal from service is disproportionate to the gravity of offence apart from the fact that the petitioner was aged 48 years at the time of passing of award and therefore directed for reinstatement of the workman into service with continuity of service, but without backwages. It was also made clear that the workman is not entitled to any future increments or promotions even in case of further settlements or

enhancement of wages by management to other workers. Aggrieved by the same, management filed the present writ petition.

It is the contention of the learned counsel for petitioner Sri P.Nageswara Sree that the Tribunal below, in spite of holding that the petitioner is guilty of the charge, ought not to have extended any sympathy and lenience in favour of a workman who had misappropriated the money by creating false documents. May be, it is a single incident of misappropriation. But in a case like this where the charges are grave in nature, any lenience shown will only be a misplaced sympathy, which canot be extended in the guise of exercise power under Section 11A of the I.D.Act.

Per contra, the learned counsel for respondent-workman Sri G.Ravi Mohan supported the impugned award and submitted that apart from the fact that the second respondent was aged 48 years, he has not committed any misconduct earlier and under those circumstances, the Tribunal below has taken a lenient view of the matter and passed the Award in favour of workman by exercising powers under Section 11-A of the I.D. Act, therefore, the writ petition is devoid of merits and is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Award and other material made available on record.

At the outset, I am of the opinion that the Tribunal below in its wisdom and in the facts and circumstances of the case, while exercising powers under Section 11-A of the I.D. Act directed the management to reinstate the petitioner with continuity of service, but without any backwages and further made clear that the workman is not entitled to any future increments or promotions even in case of any settlement or enhancement of wages to other workers. The Tribunal below has granted relief of reinstatement on the salary for which the workman was entitled as on that date till the date of his retirement.

Further, in view of the interim orders passed by this Court in W.P.M.P.No.37099 of 1995 dated 29.12.1995, the wages under Section 17-B of the I.D. Act were paid to the petitioner till he attained the age of superannuation in the year 2005. Thus, nothing remains for adjudication in this writ petition except to modify the Award passed by the Tribunal below as under:

The workman is entitled for being reinstated into service with continuity of service, but without backwages. He is not entitled for future increments, promotions even in case of enhancement of wages to other workers. Further he is not entitled for any wages from the date of award till the date of his retirement and whatever the wages paid under Section 17-B of the Act shall be treated as wages for the period he was kept out of service.

With the above modification, the writ petition is disposed of. No order as to costs.

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C.V.RAMULU, J

Date: 7.11.2006

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.30109 of 1995

7.11.2006

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.30109 of 1995

Date: 7th November, 2006

Between:

M/s Hyderabad Engineering Industries,
Balanagar Township, Hyderabad, rep. by its
Assistant General Manager (Admn.).

.. Petitioner

And

The Additional Industrial Tribunal-cum-
Additional Labour Court,
Chandravihar, M.J. Road, Hyderabad
and 2 others.

.. Respondents